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BUSHROD WASHINGTON.

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Nos, ubi decidimus,
Quo pater Aeneas, quo dives Tullus et Ancus,
Pulvis et umbra sumus.

PHILADELPHIA:
PRINTED BY C. SHERMAN & SON.
1858.

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MEMORANDUM.

UPON the death of Judge Washington, the late Hon. Joseph Hopkinson, the District Judge at that time, delivered an Eulogium upon him, at the request of a Committee of the Bar of Philadelphia. The Discourse was very just and expressive in its praise, and quite pointed in noticing Judge Washington's calmness and fearlessness at a time of high excitement. He illustrated these qualities by a particular statement of *The United States v. Bright*, in April, 1809, a case in which Brigadier-General Bright was indicted, convicted, sentenced, and sent to prison, for obstructing, with an armed military force, by the express orders of the Governor of this Commonwealth, expressly authorized by a public law of the State, the final process of the District Court of the United States, issued in obedience to a mandate from the Supreme Court at Washington. The military body had been evaded by the Marshal, who executed his process, and the Governor then succumbed, and paid the amount of the execution. The supreme authority being thus enforced, a pardon by the President was presented to the Brigadier-General at the prison door. The eulogist, in strong but general terms, also spoke of Judge Washington's "unrivalled talents upon the Bench;" but, probably to abridge the discourse, or to give place for a full detail and application of the prosecution above mentioned, he omitted to analyze or to distinguish some other peculiar and clearly-defined characteristics of his subject, which the writer thinks of sufficient interest to present in the present form. No one, perhaps, was better acquainted with these characteristics, than Judge Hopkinson, or could have described them better, if it had coincided with the plan of his Eulogium.

H. B.

BUSHROD WASHINGTON.

My acquaintance with Judge Washington began in January, 1799, when he first attended the Supreme Court of the United States as an Associate Justice. The Supreme Court then held its annual Session in the City of Philadelphia, the seat of the Federal Government. Judge Washington's commission by President Adams was dated the 20th December, 1798. He was at that time thirty-six years old, his birth in Virginia having taken place in or about the year 1762. He died in Philadelphia, on the 26th November, 1829.

As I knew him well, and bore to him as true honor and reverence as to any Judge I have ever known, I wish to discharge a part of my debt to him, by recording my love for his virtues, and my admiration of his remarkable judicial qualities. So infirm is the hold that even an eminent Judge takes of the heart or memory of the country, or of the Bar of his own Court, that, before the lapse of thirty years, his venerable shade has been effaced by new lights, in per-

haps shorter time to grow dim and to be effaced by others, and so on continually, a succession of crescent and wane, like the moon, but without repair and renewal. "So, and more also," it happens to the professors of the law. The ablest Judge, and the best lawyer in Pennsylvania that I have known, have passed from splendor to almost complete obscurity, in less than half the term of a single life. Nothing remains of them but what is absorbed into the body of the law from law reports, and merged in the undistinguishing mass, or is repositied in the hearts of a very few survivors, who are soon to go to them, and to be forgotten with them. How much, then, does it concern them all, great and little, to think less of fame and name, and more of the "works that do follow them."

As I came in one day to dinner at my lodging-house, in North Third Street, I perceived sitting in the parlor a new comer, of about the common height, of slight figure, sallow complexion, and straight brown hair, the features of his face generally small, one of his eyes apparently sightless, and the other having more than the fire of an ordinary pair. His chin was nearly or quite beardless, and it was to this, rather than to his other traits, that he owed the expression there was about him, of being an old young man, or a young old man—it was difficult at first to tell which—an expression that to some degree continued till his

death. This was BUSHROD WASHINGTON, a nephew, and to some extent the *élève* of General Washington,* and the son of John Augustine Washington, General Washington's younger brother. Judge Washington had just arrived and taken lodgings at the same house. I soon found that he was easy in his manners, and affable, unaffected, unpretending, and as far as possible from stateliness. I could hardly believe that he was a Judge of the highest Court in the land.

Though I was many years younger than he was, and but a law-student at the time, he permitted me to become acquainted with him, and very soon to be without restraint in my intercourse with him. Upon the common topics of conversation I found that I knew about as much as he did; and it was this, even more than his kind manners, that made me feel at ease with him. When I knew him better, and was in after years more competent to understand him, I came to know that he contained two different persons

* One of the wisest and discreetest letters ever written by father to son, or by guardian to ward, was addressed by General Washington to this nephew, from Head-Quarters at Newburgh, on the 15th January, 1783. In the midst of war, and of preparations for another campaign, notwithstanding the negotiations for peace, this admirable man gave his thoughts and affections to the young law-student in Philadelphia; and imparted to him, at considerable length, advice and admonition, appropriate to that condition, and worthy to be recorded in letters of gold.—*Sparks's Writings of Washington*, vol. 8, p. 372.

in the same man, not as he was more or less excited at different times, for I never knew him to be excited at all, but as he was moving in his different relations, private and public; or, rather, according to the nature of his intercourse at the time, personal or official.

In private life, and in general society, he was kind and good-humored, but not above the common level of educated men. He was unreserved, and inclined to free conversation; yet his conversation made little impression on the mind, but that he was of sound judgment, true and sincere, and altogether unstained by any of those impurities of thought or language, which, in his day, at least in this State, were a very common fruit of Bar associations at the country courts. I have seen grievous stains of this nature in some of the Bench, and of the eminent members of the Bar, who rode the Circuits before and shortly after the adoption of the Constitution. In his exemption from these, he certainly was more than an ordinary man at that time of day. I do not mean to say that his conversation was inferior or commonplace; but it had little to distinguish it, or to give it a specific character. His reading, except in the law, and in novels, of which he became a most voluminous *viva voce* reader, for the amusement of his valetudinary wife, did not appear to be extensive. His taste, particularly in music, of which he was passionately fond, and thought himself a judge, was rather unrefined. His opinions,

whenever he expressed them upon political topics, or the occurrences of the day, or on points of social discussion generally, were of course sound, but in no way striking, either by their acuteness, or novelty, or the language in which he uttered them. His abstinence from invidious allusion to other persons, and his renitency against it on all occasions, became at length very observable; and so also the abstemious part he took in conversation about the life and opinions of his great kinsman. There was great purity and delicacy in all that he said and did, and perfect measure in his expressions and actions; but it was the measure and general fitness that you observed, and not the grace or the strength, or the appositeness and point of what came from him. Had he never been seen but in mixed private society, you would have said of him, that he was a man of pure and kind affections, of cheerful and unassuming manners, fond of the society of ladies, though not a very critical judge of the sex, as well pleased by a man of little instruction as by one of much, seeking what would make the hours flow smoothly, rather than what would give them a keen relish, and with a more decided inclination to the disengaged talk of a club supper-table, and the circulation of a temperate glass, than to anything else upon the round earth. I speak of the first fifteen or twenty years after his judicial appointment. Nothing in this part of his life would have reminded you, when he was not upon duty, of either

his judicial name, or, except by name, of his renowned uncle. You would have seen that he was a sincere, true, and natural man, and would have set him down, under these qualifications, as a man of the usual intellectual qualities. In later years, in consequence of his devotion to Mrs. Washington, then a valetudinarian, both in mind and body, he very much diminished the opportunity of his friends to see him in mixed society. But a few of them saw, and with increased regard and veneration for him, how promptly he surrendered his social refreshment to the call of his domestic allegiance, while he never gave up to this claim even a vibration of the pendulum that belonged to the hour of public duty. He explained himself to me once on this point; and he has more than once intimated to me by his eye, that without taking half of a dissyllable from what belonged to the public, he would not give to the other half what belonged to his domestic duty. I will give this explanation hereafter.

Such was Judge Washington to external appearance in private society and intercourse; and I believe that the appearance represented his character when his robes were not on him.

But when his robes were upon him, that is to say, when he was seated upon his leathern cushion behind the desk of the Court, he was altogether a different person. He had no thought of following Lord Bacon's advice, and probably he had never heard of it; but if

he had thought of nothing else, he could not have followed it better: "Be not too sensible or too remembering of thy place in conversation, and private answer to suitors; but let it be rather said, *when he sits in place*, he is another man." His carriage "in place" perfectly became his station, not by assuming height, or erectness, or breadth, or sternness, but as if everything was removed from his consciousness but the duty before him, and he was to perform that under the eye and inspection of Justice herself. Without the least apparent effort, he made everybody see at first sight, that he was equal to all the duties of the place, ceremonial as well as intellectual. His mind was full, his elocution free, clear, and accurate, his command of all about him indisputable. His learning and acuteness were not only equal to the profoundest argument, but often carried the Counsel to depths which they had not penetrated; and he was as cool, self-possessed, and efficient at a moment of high excitement at the Bar, or in the people, as if the nerves of fear had been taken out of his brain by the roots.

Judge Washington was an accomplished Equity lawyer when he came to the Bench, his practice in Virginia having been chiefly in Chancery, and he was thoroughly grounded in the Common Law; but he had not been previously familiar with Commercial Law; and he had had no experience at all, either in the superintendence or the practice of jury trials at

Nisi Prius, after that fashion which prevails in Pennsylvania, and in some of the Eastern and Northern States, as well as in England, where the Judge repeats and reviews the evidence in his charge to the Jury, not unfrequently shows them the leaning of his mind in regard to the facts, and directs them in matter of law. And, nevertheless, it was in these two departments or provinces, Commercial Law and Nisi Prius practice and administration, particularly the latter, that he was eminent from the outset, and in a short time became, in my apprehension, as accomplished a Nisi Prius Judge as ever lived. I have never seen a Judge who in this speciality equalled him. I cannot imagine a better. Judging of Lord Mansfield's great powers at Nisi Prius, by the accounts which have been transmitted to us, I do not believe that even he surpassed Judge Washington; and I will refer to certain of Judge Washington's very striking qualities, which will enable others to comprehend the grounds of my opinion, if they do not fully show all the causes of his superiority. Be it observed, however, that Judge Washington never held a Court of Nisi Prius, properly speaking, as the constitution of his Court did not admit of it; but held jury trials in bank, to outward appearance in the same manner as Courts of Nisi Prius are held in Pennsylvania.

One fundamental faculty for a Nisi Prius Judge he possessed in absolute perfection — it was *attention*.

This great faculty, which by some Judges, and by some metaphysicians also, seems not to be reckoned in the category of faculties at all, is a turning difference or distinction between a good and a good-for-nothing Judge at Nisi Prius. A trial by jury is a battle. With the Judge, as well as with the Counsel, it is, for the most part, now or never. It is almost folly to be wise after the defeat, and it is therefore stultifying and criminal to be torpid or volatile during the combat:—as criminal in the Judge as in the Counsel; for although the Judge is not to fight the battle, he is in a great degree to award the victory to the better cause, and even to assist it, when negligence or torpor would put it in jeopardy. “*Nec dubium est*,” says Quinctilian, “*quin plurimum in hac parte valeat mentis intentio, et velut acies luminum a prospectu rerum quas intuetur non aversa*.” The Judge should, therefore, be wide awake by the spur of this *intentio mentis*; for it is this power or faculty that incites the memory to watch and record the operations of the other faculties, while they are employed in perceiving, comprehending, and estimating the diversified facts and propositions, and combinations of both, that are presented in the course of a judicial trial; and which is especially indispensable in a trial by jury. I do not mean to define the power in the abstract, or to describe it at large; but only to refer to it in relation to this one subject. For the most part, or with most

men, it is not possessed in much perfection, not being trained, as it might easily be, to a considerable degree of vigor. It is often, consequently, a dozing or a fugitive faculty, and ready at all times either to fold its wings and fall asleep, or to lift them, and escape altogether to another region, unless the memory, imagination, or judgment is so agreeably occupied and entertained, as to detain and keep it awake, after being awakened by it. It has a pretty good school in the profession and practice of the law; but there are some dull scholars in this respect, not otherwise dull men, who go from the Bar to the Bench.* Its great school is in an intellectual science, pure metaphysics, by no

* I have known one Judge, who was a Chief Justice also, of considerable acuteness, and of some name, who, on the Bench, did not possess the faculty in any appreciable degree. He made few or no notes of either evidence or arguments; and often, when thought to be employed in noting an argument, was scribbling caricature faces upon his paper. To so great an extent did this faculty fail him, that, on one occasion when he understood that I had advised the plaintiff's suit, but had not been retained to speak in it, and he was not satisfied with the argument of the Counsel at the Bar, he asked me, as *amicus curiæ*, to speak to the only point of law involved, which I immediately did, rather briefly. Three weeks afterwards I received a letter from him, informing me that my argument had satisfied the Court; but that on sitting down to write the Court's opinion, he found that he could not recall it, and asking me to restate it to him, which I did. He adopted it, and gave credit for it in his printed opinion. Yet the same Judge at times delivered quite able opinions.

means the best of the sciences in all respects, but the best in this, where perceptions and thoughts, and a chain of thoughts—thoughts transitive and subtle—are to be caught and held by the memory as in a vice, while other faculties are employed in imagining, comparing, reasoning, and deducing, some of their products rejected, and some retained by the same grasp, until the thinker gets, or thinks he gets, the true bearing of all upon the proposition he wishes to solve. This is the true school, and is all carried on within the chambers of the mind, where there is no light unless attention kindles it, and no hold of anything unless attention stimulates the memory to grasp it. There is, in fine, no memory and no durable perception without it. But Judge Washington had no schooling in this science. He was not a metaphysician, except so far as a thinking lawyer must be to some extent, whether he will or not; and I do not recollect to have heard or read a word of metaphysics, or of any other intellectual science, except the mixed metaphysics of the law, that had come from his lips or his pen. *Attention* sprung from his head, full grown, at least as truly as Minerva from Jupiter's; or he had trained it up from infancy in some way of his own. He possessed the power, as I have said before, in absolute perfection. I derive my knowledge of it from more than twenty years' practice in his Court at its regular semi-annual sessions of two months each, and it con-

tinued to be to the last, as much a matter of surprise and admiration with me, as at the first.

In addition to this, he had a great *quickness and accuracy of apprehension*. I have known a very eminent Judge, who could not take in the full meaning of a paper, while Counsel was reading it to him at the Bar, but must read it himself; and other Judges, who could not trust themselves to listen to a witness, taking a short note of what he said, but must make him repeat material parts, that he might write them down with some minuteness. Washington never interrogated a witness, nor asked Counsel to repeat what he had said, and but rarely called for documents after they had been read to him. He caught the important parts in a moment, and made a reliable note of them, before the Counsel was ready to proceed with further testimony.

He had a most ready command of *precise and expressive language*, to narrate facts or to communicate thoughts, and a *power of logical arrangement* in his statements and reasonings, which presented everything to the Jury in the very terms and order that were fittest, both for the Jury and for the Counsel, to exhibit the whole case. A Jury never came back to ask what he meant, and Counsel were never at a loss to state the very point of their objection to his opinion or charge, if they had any objection to make.

He maintained, by his *equanimity*, a calm and

equable temper in all parts of the Court. If a spark flew out upon any occasion, it either went out of itself, at once, or it was extinguished by a look from him—a look of half surprise, and with a little more than usual dignity of air, as if he alone, and not the spark, was to be attended to. He never interrupted Counsel—he never expressly told them that they had labored a point sufficiently, or that he wished them to consider another matter more, or that they were wasting time. But when that happened, his eye would have an expression, and occasionally he would give a short lift of the head, which they who saw much of him understood perfectly, and which said as much of his thoughts of what was going on, as he inclined to say. Beside him there sat, during nearly all his life, a most pleasant District Judge, Richard Peters, many years his senior, a very good Admiralty Judge, but much disposed to leave the watch on deck in all weathers to his sleepless colleague, putting forth now and then for his refreshment some *facetia* or other—pun, quip, crank, or quiddit—for which he was very famous. Some Judges would have looked the graver for this, and some would have been *decomposed* by it; but it was delightful to see, how a very slight ripple on the face of Washington, would show that the breeze had struck, and only just struck, and passed him, without affecting in the least the trim of his sails, or his course. From the beginning to the end of a trial, unless there

was an appeal to him on a question of evidence or the like, he was perfectly silent, and constantly attentive, up to the very moment of delivering his charge to the Jury, and he was ready to do this at the next moment after the concluding Counsel sat down.

These are some of the faculties of Judge Washington, which I had in mind when I referred to his extraordinary abilities as a Judge at Nisi Prius. I must not be understood to mean that there was a falling off, either of the faculties themselves, or in the manifestation of them, at the hearing of arguments upon mere questions of law: quite the reverse; but the field for exhibiting them in perfection was the jury trial.

And with this apparatus of powers or instruments, and a great fund of legal knowledge to work with, it cannot be very difficult for any one to see him, as I now see him, beginning a jury trial, seated on that leathern cushion I have spoken of, with his box of rather Scotch snuff within his reach. It may be, if you please, a cause of great moment and expectation, of much complication in point of evidence, and of some difficulty and novelty in point of law; witnesses to be examined *viva voce* at the Bar; depositions taken under commission, and written contracts and correspondence, to be read; perhaps orders in council, or French decrees, by which England and France so much enriched the Bar, and puzzled the Bench, and impover-

ished the Insurance Companies, in former days. It is all the same to him. There does he sit five hours, perhaps six, without once leaving that chair, or changing his position in it, or ever taking his eye—that bright, steady, single eye—from the Counsel, or the witness that is on the floor, except to make a short note of the argument or the evidence, or to take a pinch of half Scotch snuff. During all this time, and so from day to day, if the trial shall last a week or even longer, he will never interrupt the speaker, or the reader, or the witness; nor disclose to the observer, by more or less attention, or in any other way, that the speaker is acceptable to him, or otherwise, or is speaking to a man who has an opinion or judgment of his own. He may smile at what Judge Peters whispers at his ear, and go on as before. He may lift his head half an inch at a spark, and lower it again. He may possibly put his right leg over his left, after his left knee has been uppermost for two hours. He will take short notes, and then look and listen to the last; and, if need be, on the very close of the last speech, he will place before the Jury, this complicated case of fact and law and contradictory evidence, parol and written, so clearly, in such lucid order of parts, and with such masterly instructions, adverting to all that Counsel had urged, and which any one would think it material to notice, that it will have almost the air of inspiration. I have seen the same thing done many, many times;

and never heard a suggestion from anybody, that he was either too concise, or too full, or in the least degree deficient or partial. His arrangement of the evidence in his charge, and of the reciprocal bearing of the parts, was, of itself, an argument for the side he favored, and he would sometimes manifest his leaning rather more clearly, by his emphasis on certain parts; but he never expressed a direct opinion upon the evidence, to rule, still less to overrule, the fair judgment of the Jury upon the whole evidence. Upon the law he was explicit, distinct, and precise; and if there was nothing but law in the case, he would hold the Jury inexorably to that, until the opinion, if necessary, should be reviewed, on a motion for new trial.

If he was ever disposed to practise a little art upon the Bench, which did sometimes happen when the Court was hearing law arguments, though I never saw it when a Jury was before him, it was the giving his complete attention, and with some more show of deference than was usual in him—for, in general, he had little of that—to an unsound argument, that was pressed upon him with confidence and positiveness, perhaps the more from his seeming to receive it kindly; and then, especially if it came from Counsel who ought to have known better, he would, as a huntsman serves a hound who opens vociferously upon a wrong scent, take the offender by the neck, give him half a dozen sharp lashes, and leave him to re-

cover himself at his leisure. This, it is true, was rarely done, and never, unless the punishment was due, and never, also, but in such a manner as to be without personal offensiveness—the argument, and not the speaker, being treated as the delinquent. He could be very sarcastic and severe, but this was far from his general bearing. It required but an example or two, as may be supposed, to make all the Bar very careful of what they said to him, and much more attentive to their argument than to his manner of receiving it.

I have said that he was inexorable in holding the Jury to his opinion in point of law, when there were no disputed facts in the cause. I recollect one memorable instance of it. An action of ejectment was tried before him, in which the question was, whether a devise carried an estate tail with a remainder in fee, or an estate in fee simple with an executory devise in fee. The evidence was altogether confined to the will, the pedigree of parties, one or two mesne conveyances, and the defendant's possession, no part of which was disputed, nor admitted of dispute. The cause was, for certain reasons, argued at length in the presence of the Jury; and at the close, Washington declared explicitly and pointedly, that his opinion was with the plaintiff, and charged the Jury that their verdict should be for the plaintiff. The Jury went out, and staid out till the next morning, and then returned with a verdict for

the defendant. The same had happened once or twice in the Supreme Court of the State, upon the same title, in consequence of what was said to be the hardship upon the party in possession. While the Jury were leaving the Box to separate, I moved the Court for a *rule to shew cause* why a new trial should not be granted. Washington: "*Let the verdict be set aside.* Where a case contains no matter of controversy but what is matter of law, I do not acknowledge that the Jury have any discretion but to find a verdict in conformity to the charge of the Court upon the law." He said, in rather a lower tone, that he would do so a hundred times running in the same kind of case; and for this he was pretty roundly censured in a newspaper. When the paragraph was shown to him, he said, and with an expletive that he never used in later days, "I would set it aside a thousand times."

While his powers were in their vigor, every cause that could be carried into his Court, was, without fail, carried there, if the Counsel had confidence in his cause, such was the satisfaction of the Bar and people with his administration of the law, and with the Juries of that Court under his supervision; and, although some of his decisions were reversed upon appeal or writ of error, yet the great body of them was acquiesced in; and it should be remembered, that reversal, especially by a divided Court, is not an in-

fallible proof of error, except for the disposal of the very cause. "*Sed victa Cutoni*," I know to have been true of himself in regard to some reversals, and of the Bar in regard to several. For more than twenty-five years the Circuit Court was a model for judicial administration. There was rule for all that was done, and for all that was not done. Causes were tried or postponed according to the rules of practice; and the consequence was, that Counsel were always ready for trial, or ready with a legal reason to the contrary. Judge Washington during this period would have looked as with both his eyes, if postponement or delay had been asked upon the ground that a colleague was engaged in another Court. And yet no one suffered by the system. The machine was closely geared, but it worked with great truth, and with the least wear and tear to itself and to the suitors.

In the latter part of this period, in civil causes, he became very observant of the then regular hour of adjournment, three o'clock. As the clock struck ten, he was always found in his saddle, ready to begin the day's work; and this practice was never changed. Latterly, as the clock struck three, he would immediately order an adjournment of the Court, and rise from his chair. On one occasion I was in the middle of a sentence, when the hammer of the State-House clock fell, and he said, with a smile, half rising from his chair, "Mr. —, I will hear the rest of that sentence to-morrow morn-

ing." I afterwards joined him, and walked homeward with him a few squares, when he gave me the explanation of his abruptness. "The sound of that clock," he said, "is as distinctly heard by Mrs. Washington at our lodgings, as it is heard by us in the court-room; and if I am not in her parlor within five minutes afterwards, she imagines that some evil has happened to me, and her nerves are disordered for the rest of the day. Their condition is at all times bad, but then it becomes much worse. In general, I give the whole of the evening to reading aloud to her such books as will amuse and interest her, until drowsiness comes on. I look at neither book nor paper in the cause until the next morning, and then, by early hours, I endeavor to redeem the time." After this, the like occurrence happened more than once, when a look and a slight inclination of the head, were all that preceded the order to "adjourn the Court." We all came to understand it. The precaution in regard to Mrs. Washington was, I have no doubt, necessary. They were without children, and she uniformly attended him upon his Circuit. When his death occurred, in Philadelphia, it broke her down; and, though she attempted to get home, when his remains were attended to Mount Vernon, she died upon the road.

With the exception of the session in which he died, there was but one instance in his judicial life in which

he failed to attend the Circuit Court, and to continue to preside in it until his calendar was disposed of.

General Washington devised Mount Vernon, and a large part of that estate, to Bushrod Washington in fee simple, after a life estate to Mrs. Washington in all his real and personal property, which included his slaves. To the slaves, he gave their freedom after Mrs. Washington's death, this postponement of emancipation being ordered in consequence of their intermarriage with the dower slaves of Mrs. Washington's first marriage, who were not at his disposal. The provisions of General Washington's will were very benevolent in regard to these slaves; but there was no provision in it for their removal in a body to a free State, and on the contrary, there was a provision that none of them should be sold or transported out of the State of Virginia. His will and death preceded by several years the practice, or the suggestion, of colonization in Africa.

A very few years after General Washington's death, Judge Washington came into Court in the morning, and informed Judge Peters and the Bar, that he was compelled by pressing circumstances to leave the Court, and to proceed to Mount Vernon. It was understood that Chief Justice Marshall and Judge Washington had been urgently called to Mrs. Washington, in consequence of an attempt to set fire to Mount Vernon House, in which some of the slaves

were thought to be implicated ; and it was afterwards said, that Marshall and Washington advised the immediate emancipation of the slaves, as a bar to similar and worse attempts. At a time when there was little or no experience in the world of the effects of an unprepared emancipation of a considerable body of slaves within a community having large numbers of them, General Washington, from his predominant preference of free institutions and labor, had made this testamentary provision without duly estimating, it seems, the dangers to the intermediate life, or to the slaves themselves. I understood years afterwards in the neighborhood, that no good had come from it to the slaves, and that the State of Virginia was compelled to place restraints upon emancipation within her limits, for the general good of all.

This was the only interruption that occurs to me, of Judge Washington's long and faithful service in the Pennsylvania Circuit. The whole event just noticed had an unfavorable effect on his wife's nerves ; but his own equal and rather cheerful temper continued to the last, though the energy with which he used to despatch business, or, to speak more accurately, the working of the fine judicial machine, of which he was the motive power, became less regular in a few of his latest years, whether because his own force was impaired, or because resisting forces, which have since done some mischief to our Courts, had increased,

it was not easy to ascertain. He was always conscientious, wakeful, and true ; and for a large portion of the last half of his life, he was sustained and elevated in the performance of all his duties, by a religious profession, openly made in the Protestant Episcopal Church, and by him constantly observed.

I have never thought that his Reports of his own decisions, did him entire justice, while they, in no adequate manner at all, fully represent his judicial powers, or the ready command he held of his learning in the law. They were for the most part written out in his note-books, *calamo currente*, as they are now printed ; and besides being the fruit of less labor than they deserved, he was by no means as good a writer as he was an extempore speaker in the law. His pen was never so expressive and pointed as his tongue. But they nevertheless showed very considerable learning, perfect loyalty to the law, and are perhaps of as much authority as the decisions of any court, not of final jurisdiction, can pretend to. They are, I believe, the imprint of the first and only draught that he made of them. His practice, after he had excogitated the matter to a conclusion by such reasoning as satisfied him, was to put his reasons into words upon his little blank-book, with more attention to the reasons than to the words, and they were then at the service generally of those who wished to copy them. And I recollect one instance in which the conscientiousness of

his reasoning was exemplified by a remark in the course of his page, pretty much to this effect: "But this reasoning will carry me to a conclusion directly opposite to that which my mind had before arrived at; nevertheless I shall follow it." And he did follow it, and did come and adhere to that opposite conclusion. Such also was his course in the open court. If he had expressed to the Jury a clear and unqualified opinion upon the law—and his opinions, so expressed, were generally unqualified—this in no degree prejudiced his attention to a subsequent argument, nor, if that argument changed his opinion, prevented his declaring it frankly, and with apparent satisfaction. How rare is this quality among Judges in general, and how irrefragable a proof it is, both of a strong mind, and of a most honest one!

I may, I hope, be permitted to say, that to the judicial accomplishments of learning, attention, promptness, steadiness, courage, and incorruptible faith, he acquired a characteristic in his long service in Philadelphia, which, if more limited in its demonstrations and range, was at least as attractive as any that he showed, to those who were his subministers in the service,—a warm affection for the Bar of Philadelphia. He manifested this especially at the Bar of the Supreme Court of the United States, where it was certainly no disadvantage to Counsel in his time that they were of the Philadelphia Bar. Of the younger members of

the Bar he used to speak as "his children;" sometimes he called them "his boys;" and he used to make his boast of them, much more than any of them would do for themselves. He referred to them as men who to the usual intellectual qualifications for the Bar, added the higher qualification of integrity, professional and personal. And the praise from him was as high as possible, for he was not given to demonstrations of this sort, and he was as true, honorable, and conscientious, as the great Washington himself.







WERT BOOKBINDING

JAN 1989

Grantville, PA

